

MINUTES OF THE MEETING OF THE BAR-BENCH-MEDIA CONFERENCE

A meeting of the Bar-Bench-Media Conference was held on Wednesday, February 8, 2006 at 12:30 p.m. in the Supreme Court Conference Room. The members of the Conference in attendance were:

Members of the Electronic News Media:

Micheline Boudreau
Peg Brickley
Jon Dearing
Mark Eichmann

Members of the Print News Media:

Elizabeth Bennett
Randall Chase
Rita Farrell
David F. Ledford

Members from the Bench:

Vice Chancellor Leo E. Strine, Jr.
Judge Peggy L. Ableman
Chief Judge Chandlee Johnson Kuhn

Members from the Bar:

Donald C. Brown, Esquire
David G. Culley, Esquire

Greg Burton of the News Journal, Andrea Shaffer of the Family Court and Steve Taylor of the Supreme Court were also in attendance.

The first agenda item was the approval of the draft minutes from the December 8, 2005 meeting of the Conference. Upon motion, which was duly seconded, the

minutes were unanimously approved as submitted.

The second agenda item, under old business, was Courtroom Connect/Disney Report. Kathleen Jennings-Hostetter was unable to attend the meeting and present a report. Steve Taylor reported that he had spoken with Chancellor Chandler about the Disney trial. The Chancellor related that the coverage of the trial was extremely smooth with no disruptions. From his point of view, the experiment was a success. Steve has collected reports and suggestions from Rita Farrell and John Dearing concerning the coverage. He will attempt to put a brief report together for the Conference.

Rita Farrell noted that the television coverage was provided by a commercial vendor for profit, and therefore Courtroom Connect was not a test of expanded media coverage. The broadcast quality of Courtroom Connect was excellent, and the live feed in the overflow room was important. One drawback, though, is that the camera captured only the witness: not the judge, attorneys, or courtroom scene. But in Sussex courthouse, it was easier to follow witness on camera than in courtroom.

Greg Burton reported on the activities of the Electronic Media Access to Courtrooms Subcommittee. The News Journal had made arrangements to cover two Court of Chancery proceedings. The case before Vice Chancellor Parson concerning a University of Delaware fraternity settled. Prior to settling, one of the parties objected

to extended media coverage. Vice Chancellor Parson asked for briefing and decided the issue in favor of the media. The second case concerning opening Family Court hearings to the public was before Vice Chancellor Strine. There were some access issues concerning placement of equipment and people. The feed back from the Court of Chancery was positive.

Greg said that the News Journal has gone about as far as it can go in the coverage permitted under the current experiment. He noted that the News Journal would ask for future coverage in the Court of Chancery when an interesting case arises. He related that there are issues concerning the layout of the courtrooms and the positioning of equipment. The positioning of the camera person is also an issue. The ideal situation would be to put camera people in the well of the courtroom. Cameras could also be mounted on the courtroom walls.

Conference members enquired as to whether the Judiciary had a contract with Courtroom Connect for televising court proceedings. Steve Taylor said that he thought the only contract with Courtroom Connect was for public access terminals to connect with the Internet to keep users outside of the courts' network. The Supreme Court and the Court of Chancery were discussing possible Internet coverage contracts with Courtroom Connect, but no decisions were imminent one way or the other.

The issue of providing pool coverage in cases where multiple media are

interested was briefly discussed. It was noted that the current Supreme Court coverage rules and the proposed Conference rules from several years ago address the pool coverage issue. The first requesting media entity for any electronic coverage whether it is from television, radio, or photography must be able to provide a feed or photographs to all other requesting media. If a media entity is unable to provide pool coverage when requested, the non compliant media entity will be replaced by the next requesting media entity that can provide pool coverage.

It was discussed and decided that Greg's subcommittee would arrange a meeting with Vice Chancellor Strine, Ed Pollard, Patti Flinn from the Court of Chancery, Steve Taylor and Sarah Lubin of the Administrative Office of the Courts to evaluate courtrooms in each of the trial courts in the New Castle County Courthouse as to suitability for media coverage of a trial. It was mentioned that perhaps each court should have at least one, if not two, courtrooms equipped for media coverage. Any case in which media requests to provide coverage will be scheduled in a courtroom that is equipped for coverage. It was estimated that it may cost \$30,000 a courtroom to equip for media coverage. The issue of who would bear the costs was alluded to but went unresolved. Some Conference members felt that the \$30,000 price was much too high because the technology has changed since this estimate was received several years ago.

The Conference members discussed the need to expand the experiment beyond trials in the Court of Chancery and non-jury civil trials in the Superior Court. There are few cases of interest for television purposes in the Court of Chancery, and there is little, if any, interest in civil bench trials in the Superior Court. Since the technical issues are not insurmountable and recent electronic media coverage has been positive from the courts' perspectives, it appears now is the time to move forward with electronic media coverage of criminal proceedings. The Conference is well aware of the issues of the possible effects such coverage could have on juries, witnesses, lawyers, and judges as well as the fair trial issues. Greg Burton pointed out that other states have rules in place that provide safeguards to ensure criminal trials proceed according to guidelines and procedures established by the Court in cases where there is electronic media coverage. Steve Taylor said that the Conference had provided the Supreme Court with a draft for expanded media coverage that included procedures and forms. The Conference unanimously passed a resolution to recommend to the Supreme Court that: The Bar-Bench-Media Conference of Delaware recommends that the Delaware Supreme authorize an experiment, during the next year, to permit expanded electronic media coverage of criminal motion practice in the Superior Court and of civil jury trials in the Superior Court where the parties consent subject to procedures and guidelines drafted by the Conference and approved by the Supreme Court to

protect the interested parties including the juries.

David Culley reported on the proposed Workshop on Reporters Covering the Courthouse. The subcommittee has met and advanced the ball. There would be a one day workshop for the media at the Delaware State Bar Association in October. The topic would be how the deliberative process works with a panel of judges and lawyers led by a moderator from academia. The panel would discuss how a case progresses from inception to conclusion including how a judge goes about making a final decision. Other topics that could be included are: (1) How does the media go about reporting the decision to the public?, (2) How does the media find out about the decision?, (3) What were the constraints on the judge and jury?, (4) How do the judge and attorneys communicate or not communicate with the media?, and (5) What are the ethical constraints on judges and lawyers in reporting to the media? The media members noted that the media can only report what people tell the media. In many cases, lawyers do not comment or advise their clients including companies not to comment. The media often can only get spin documents authored by public relations offices.

On behalf of the Access Subcommittee, Peg Brickley provided a skeletal list of issues (attached) and welcomed comments. Major access issues that need to be discussed are the public access terminals, the use of commercial vendors to store court

documents, availability of transcripts and the access to FTR Gold digital audio recordings of court proceedings, and sealed records among other issues.

Under new business, Michelene Boudreau reported that the National Center for Courts and Media does not provide grants to fund or sponsor workshops. The Center will provide materials for programs upon request.

David Ledford spoke briefly about the National Freedom of Information Coalition. The purpose of the organization is to protect the public's right to know through education of media professionals, attorney, academics, students and the general public. The Coalition offers start up funding to help start State FOI coalitions and to assist with projects concerning public access to records and meetings. The News Journal is working with the League of Women's Voters to have a meeting in the February - March time frame with initial stake holders about a possible Delaware Coalition. Mr. Ledford noted that Delaware is a tough state to get access to information and cited DNREC as an example.

The final business item was selecting a next Conference meeting date. The Conference will meet on Wednesday, May 3, 2006 at 12:30 p.m. in the Supreme Court Conference Room in Wilmington. Lunch will be provided. An agenda and draft minutes will be transmitted prior to the meeting date.

The meeting adjourned at 1:57 p.m.

Respectfully submitted,

April 28, 2006